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June 10, 2003

RECEIVED  
JUN 12 2003  
MAIL  
MANAGEMENT  
STB

**VIA FEDERAL EXPRESS**

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423

RECORDATION NO. 24481 FILED

JUN 12 '03

11-00 AM

SURFACE TRANSPORTATION BOARD

**Re: Recordation of Railcar Mortgage and Security Agreement**

Dear Mr. Williams:

I have enclosed one (1) original and two (2) certified copies of the document described below, to be recorded pursuant to Section 11301 of Title 49 of the United States Code and the regulations adopted thereto.

The document is a Railcar Mortgage and Security Agreement, dated June 9, 2003, a primary document, between Debtor (as set forth below) and Secured Party.

The names and addresses of the parties to the document are as follows:

Secured Party: Banc One Mezzanine Corporation  
120 South LaSalle Street  
Chicago, Illinois 60603  
Attention: Michael J. Revord

Debtor: Eaglebrook Inc.  
4801 Southwick Drive, Suite 200  
Matteson, Illinois 60443  
Attention: Chief Financial Officer

A description of the equipment covered by the document follows:

71 tank cars, bearing marks and numbers EAGX 19001 through EAGX 19071, inclusive

A filing fee of \$30.00 is enclosed. Please return the original, any extra copies not needed by the Surface Transportation Board for recordation and the enclosed copy of this letter, each stamped with your recordation number, in the enclosed self-addressed envelope to:

Tyler A. VanLonkhuyzen  
Seyfarth Shaw  
55 East Monroe, Suite 4200  
Chicago, Illinois 60603

A short summary of the document to appear in the index follows:

Railcar Mortgage and Security Agreement between Banc One Mezzanine Corporation and Eaglebrook Inc., dated June 9, 2003, covering 71 tank cars, bearing marks and numbers EAGX 19001 through EAGX 19071, inclusive.

Thank you for your assistance with this matter.

Sincerely,

SEYFARTH SHAW

  
Tyler A. VanLonkhuyzen

Enclosures

cc: Theodore E. Cornell III (w/o enclosures)  
Michael J. Revord (w/o enclosures)

**PAYMENT OF THE OBLIGATIONS (AS DEFINED HEREIN) AND ENFORCEMENT OF THE SECURITY INTEREST UNDER THIS AGREEMENT ARE SUBORDINATED SUBJECT TO THE TERMS AND CONDITIONS OF THE DEBT SUBORDINATION AND INTERCREDITOR AGREEMENT, DATED AS OF THE DATE HEREOF, BY AND BETWEEN BANK ONE, NA (FORMERLY KNOWN AS AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO) AND BANC ONE MEZZANINE CORPORATION.**

**RAILCAR MORTGAGE AND SECURITY AGREEMENT**

This RAILCAR MORTGAGE AND SECURITY AGREEMENT ("Mortgage") is entered into as of June 9, 2003 by and between **Eaglebrook Inc.** ("Mortgagor"), a Delaware corporation with its principal place of business at 4801 Southwick Drive, Suite 200, Matteson, Illinois 60443, and **Banc One Mezzanine Corporation**, a Delaware corporation ("Secured Party") with its principal place of business at 120 South LaSalle Street, 6th Floor, Chicago, Illinois 60603 ,

**RECITALS:**

- A. Mortgagor is indebted to Secured Party pursuant to a Note Purchase Agreement, dated as of June 9, 2003, between the parties (as amended or supplemented from time to time, the "Note Purchase Agreement").
- B. Mortgagor has guaranteed the obligations of Eaglebrook International Group, Ltd., a Delaware corporation and the sole stockholder of the Mortgagor ("EIG"), under that certain Note Purchase Agreement, dated as of June 9, 2003, between EIG and the Secured Party (the "EIG Note Purchase Agreement"), including, without limitation, the repayment of the note or notes made by EIG in favor of Secured Party (as amended or supplemented from time to time, the "Guaranty").
- C. The parties wish to provide for the terms and conditions upon which Mortgagor's liabilities and obligations under the Note Purchase Agreement and the Guaranty shall be secured.
- D. This Mortgage is made to secure the liabilities and obligations of Mortgagor under the Note Purchase Agreement and the Guaranty and in consideration of advances, credit or other financial accommodations now or hereafter being afforded to Mortgagor by Secured Party.

NOW THEREFORE, FOR VALUE RECEIVED, in consideration of the foregoing, each of which is an integral part hereof and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and also in consideration of the promises set forth herein, Mortgagor agrees with Secured Party as follows:

RECORDATION NO. 24481 FILED

JUN 12 '03

11-00 AM

SURFACE TRANSPORTATION BOARD

## 1. DEFINITIONS AND TERMS

1.1. The following words, terms and/or phrases shall have the meanings set forth thereafter:

A. “Obligation” shall mean all obligations and liabilities of the Mortgagor to Secured Party (including without limitation all debts, claims, and indebtedness) whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and/or from time to time hereafter owing, due or payable, however evidenced, created, incurred, acquired or owing and however arising, whether under this Mortgage, the Guaranty, the Note Purchase Agreement, any Note or Notes (as defined in the Note Purchase Agreement) or the Other Agreements (as hereinafter defined) or by operation of law or otherwise.

B. “Other Agreements” shall mean all agreements, instruments and documents, including without limitation, mortgages, deeds of trust, loan agreements, notes, pledges, powers of attorney, consents, assignments, contracts, notices, security agreements, leases, financing statements and all other written matter heretofore, now and/or from time to time hereafter executed by and/or on behalf of the Mortgagor and delivered to Secured Party in connection with the Guaranty or the other Security Documents (as defined in the Note Purchase Agreement) or the indebtedness and obligations of Mortgagor arising or incurred thereunder, and specifically including such Guaranty and the other Security Documents.

1.2. Except as otherwise defined in this Mortgage, the Guaranty and the Note Purchase Agreement or the Other Agreements, all words, terms and/or phrases used herein and therein shall be defined by the applicable definition therefor (if any) in the Uniform Commercial Code of the State of Illinois.

## 2. COLLATERAL

2.1. To secure the prompt, complete and unconditional payment to Secured Party of the Obligations and the prompt, full and faithful performance by the Mortgagor of all of the provisions to be kept, observed or performed by Mortgagor under this Mortgage, the Guaranty and the Note Purchase Agreement and/or the Other Agreements, Mortgagor does hereby grant, mortgage, pledge, transfer and collaterally assign to the Secured Party, a continuing lien on and security interest in, all of Mortgagor’s right, title and interest in, to and under all of the following assets, whether now or hereafter existing, arising and/or acquired:

(a) the rail tank cars described in Exhibit A attached hereto (“Tank Cars”); (b) all accessions to the foregoing and all substitutions, renewals, improvements and replacements of the foregoing; (c) all books, records and computer records in any way relating to the Collateral herein described; and (d) all leases, rents, products and proceeds in any way arising or relating to any of the foregoing, including without limitation proceeds of insurance policies insuring the foregoing (individually and collectively, the “Collateral”).

Mortgagor shall make appropriate entries upon its financial statements and its books and records disclosing Secured Party's security interest in and collateral assignment of the Collateral.

2.2. All of the Obligations shall constitute one obligation secured by Secured Party's security interest in the Collateral and by all other security interests, liens, claims and encumbrances heretofore, now and/or from time to time hereafter granted by Mortgagor to Secured Party.

2.3. Mortgagor shall execute and deliver to Secured Party, at the request of Secured Party, all agreements, instruments and documents ("Supplemental Documentation") that Secured Party may reasonably request, in form and substance acceptable to Secured Party, to perfect and maintain perfected Secured Party's security interest in the Collateral and to consummate the transactions contemplated in or by this Mortgage, the Guaranty and Purchase Agreement or the Other Agreements, including, without limitation, all documents and instruments necessary to acknowledge and record this Mortgage and the security interest created, hereby with the Surface Transportation Board in accordance with 49 U.S.C. §11301. Mortgagor agrees that a carbon, photographic or photostatic copy, or other reproduction, of this Mortgage or of any financing statement shall be sufficient as a financing statement.

2.4. Secured Party shall have the right, at any time during Mortgagor's usual business hours, to inspect the Collateral and all related records (and the premises upon which it is located) and to verify the amount and condition of or any other matter relating to the Collateral.

2.5. Mortgagor warrants and represents to and covenants with Secured Party that: (a) Secured Party's security interest in the Collateral is now and at all times hereafter shall be perfected and second in priority only to the security interest of Bank One, NA (formerly known as American National Bank and Trust Company of Chicago) as provided for in the Debt Subordination and Intercreditor Agreement dated on or about the date hereof by and between Bank One, NA and Secured Party; and (b) the jurisdiction of organization, and offices and/or locations where Mortgagor keeps its records concerning the Collateral are at Mortgagor's places specified at the beginning of this Mortgage, and Mortgagor shall not remove such records therefrom or move its jurisdiction or form of organization unless Mortgagor gives Secured Party written notice thereof at least thirty (30) days prior thereto and the same is within the continental United States of America.

2.6. In no event shall Mortgagor make any sale, transfer or other disposition of any of the Collateral, except as authorized in a writing executed by Secured Party and delivered to Mortgagor. No such authorization given by Secured Party to sell any specified portion of Collateral or any items thereof, and no waiver by Secured Party in connection therewith shall establish a custom or constitute a waiver of the prohibition contained in this Mortgage against such sales, with respect to any portion of the Collateral or any item thereof not covered by said authorization.

### 3. WARRANTIES, REPRESENTATIONS AND COVENANTS; INSURANCE AND TAX

3.1. Mortgagor, at its sole cost and expense, shall keep and maintain: (a) the Collateral insured for the full insurable value against theft, damage and all other hazards and risks ordinarily insured against by other owners or users of such assets in similar businesses; and (b) public liability and property damage insurance relating to Mortgagor's ownership and use of its assets. All such policies of insurance shall be in form, with insurers and in such amounts, as may be satisfactory to Secured Party.

3.2. Mortgagor shall pay promptly, when due, all taxes, levies, assessments, charges, liens, claims or encumbrances of any federal, state or local agency body or department upon the Collateral, Mortgagor's business, assets, income or receipts and shall not permit the same to arise, or to remain, and will promptly discharge the same.

### 4. WARRANTIES, REPRESENTATIONS AND COVENANTS: GENERAL

4.1. Mortgagor warrants and represents to and covenants with Secured Party that: (a) Mortgagor has the right, power and capacity and is and will be duly authorized and empowered to enter into, execute, deliver and perform this Mortgage, the Guaranty and the Note Purchase Agreement and the Other Agreements; (b) the execution, delivery and/or performance by Mortgagor of this Mortgage, the Guaranty and the Note Purchase Agreement and the Other Agreements shall not, and will not, by the lapse of time, the giving of notice or otherwise, constitute a violation of any applicable law or a breach of any provision contained in Mortgagor's Certificate of Incorporation, By-Laws, or similar documents or contained in any agreement, instrument or document to which Mortgagor is now or hereafter a party or by which it is or may become bound; (c) Mortgagor has and at all times hereafter shall have good, indefeasible and merchantable title to and ownership of the Collateral, free and clear of all liens, claims, security interests and encumbrances except those of Secured Party and Bank One, NA; (e) Mortgagor is not, and will not be during the term hereof in violation of any applicable federal, state or local statute, regulation or ordinance, in any respect materially and adversely affecting its business, property, assets, operations or condition, financial or otherwise; (f) Mortgagor is not in default with respect to any indenture, loan agreement, mortgage, deed or other similar agreement relating to the borrowing of monies to which it is a party or by which it is bound; (g) Mortgagor has duly filed all documents necessary in proper form to register Mortgagor's ownership and control of the Tank Cars with the American Association of Railroads ("AAR") and has remarked the Tank Cars with Mortgagor's identification numbers in accordance with all applicable federal and state transportation laws and regulations and AAR rules.

4.2. Mortgagor covenants with Secured Party that Mortgagor shall not, without Secured Party's prior written consent thereto: (a) grant a security interest in, assign, sell, lease or transfer or dispose of any of the Collateral to any person or entity or permit, grant, or suffer a lien, claim or encumbrance upon any of the Collateral, except the prior mortgage granted to Bank One, NA; or (b) enter into any transaction not in the ordinary course of business which materially and adversely affects Mortgagor's ability to repay the Obligations, and other obligations and liabilities of Mortgagor to any third party or the Collateral.

4.3. Mortgagor covenants with Secured Party that Mortgagor shall cause to be furnished to Secured Party such data and information (financial and otherwise) as Secured Party, from time to time, reasonably may request bearing upon or related to the Collateral, Mortgagor's financial condition and/or result of operations.

4.4. Mortgagor covenants with Secured Party that Mortgagor shall, at all times, use and operate the Collateral in compliance with applicable industry, federal and state laws and regulations, and Mortgagor shall, at all times, keep and maintain the Collateral in good operating condition and repair, normal wear and tear excepted. Mortgagor shall at all times keep the Collateral clearly marked with Mortgagor's ownership identification numbers consistent with the records thereof maintained at the AAR and consistent with Exhibit A hereto.

## 5. DEFAULT

5.1. The occurrence of any one of the following events shall constitute a default ("Event of Default") by Mortgagor under this Mortgage: (a) if Mortgagor fails or neglects to perform, keep or observe any term, provision, condition, covenant, warranty or representation contained in this Mortgage and such failure or neglect continues for fifteen (15) days; (b) if Mortgagor fails or neglects to perform, keep or observe any term, provision, condition, covenant, warranty or representation contained in the Guaranty and the Note Purchase Agreement or in the Other Agreements, which is required to be performed, kept or observed by Mortgagor, beyond any applicable cure period; (c) if the Collateral or any other of Mortgagor's assets are attached, seized, subjected to a writ of distress warrant, or are levied upon, or become subject to any lien; or come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors; (d) if Mortgagor generally fails to pay, or admits in writing its inability to pay, debts as they become due, if a petition under Title 11, United States Code or any similar law or regulation shall be filed by or against Mortgagor or if Mortgagor shall make an assignment for the benefit of its creditors or if any case or proceeding is filed by or against Mortgagor for its dissolution or liquidation, or if Mortgagor is enjoined, restrained or in any way prevented by court order from conducting all or any material part of its business affairs (provided, however, that if such commencement of proceedings against Mortgagor is involuntary, such action shall not constitute an Event of Default unless such proceedings are not dismissed within thirty (30) days after commencement of such proceedings); (e) if a notice of lien, levy or assessment is filed of record or given to Mortgagor with respect to all or any material portion of Mortgagor's assets by any federal, state or local department or agency; or (f) the occurrence of an Event of Default, or other default, under the Guaranty and the Note Purchase Agreement or any of the Other Agreements.

5.2. All of Secured Party's rights and remedies under this Mortgage, the Guaranty and the Note Purchase Agreement and the Other Agreements are cumulative and nonexclusive.

5.3. Upon an Event of Default, the Obligations shall be due and payable forthwith.

5.4. Upon an Event of Default, Secured Party, in its sole and absolute discretion, may exercise any one or more of the rights and remedies accruing to a secured party under the Uniform Commercial Code of the relevant state and any other applicable law upon default by a debtor.

5.5. Upon an Event of Default, Mortgagor, immediately upon demand by Secured Party, shall assemble the Collateral and make it available to Secured Party at a place or places to be designated by Secured Party which is reasonably convenient to Secured Party and Mortgagor. Mortgagor recognizes that in the event Mortgagor fails to perform, observe or discharge any of its obligations or liabilities under this Mortgage, the Guaranty and the Note Purchase Agreement or the Other Agreements, no remedy of law will provide adequate relief to Secured Party, and agrees that Secured Party shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages. Without limiting the generality of the foregoing, upon an Event of Default and in connection with the sale of any Collateral by Secured Party in accordance herewith, Mortgagor shall at Secured Party's request instruct AAR in writing to rescind the registration of ownership in Mortgagor's name in favor of a registration in the name of Secured Party or such person or persons as Secured Party may designate.

5.6. Any notice required to be given by Secured Party of a sale, lease, other disposition of the Collateral or any other intended action by Secured Party, deposited in the United States mail, postage prepaid and duly addressed to Mortgagor at the address specified at the beginning of this Mortgage not less than ten (10) days prior to such proposed action, shall constitute commercially reasonable and fair notice to Mortgagor thereof. A copy of any notice given by Secured Party to Mortgagor hereunder shall be sent to Roy L. Bernstein, Esq., Schwartz & Freeman, 401 North Michigan Avenue, Suite 1900, Chicago, Illinois 60611. A copy of any notice given by Mortgagor to Secured Party hereunder shall be sent to Theodore E. Cornell III, Seyfarth Shaw, 55 E. Monroe, Suite 4200, Chicago, Illinois 60603.

5.7. Upon an Event of Default, Mortgagor agrees that Secured Party may, if Secured Party deems it reasonable, postpone or adjourn any such sale of the Collateral from time to time by an announcement at the time and place of sale or by announcement at the time and place of such postponed or adjourned sale, without being required to give a new notice of sale. Mortgagor agrees that Secured Party has no obligation to preserve rights against prior parties to the Collateral. Further, to the extent permitted by law, Mortgagor waives and releases any cause of action and claim against Secured Party as a result of Secured Party's possession, collection or sale of the Collateral, any liability or penalty for failure of Secured Party to comply with any requirement imposed on Secured Party relating to notice of sale, holding of sale or reporting of sale of the Collateral, and any right of redemption from such sale.

## 6. GENERAL

6.1. Mortgagor waives the right to direct the application of any and all payments at any time or times hereafter received by Secured Party on account of the Obligations and Mortgagor agrees that Secured Party shall have the continuing exclusive right to apply and re-apply any and all such payments in such manner as Secured Party may deem advisable, notwithstanding any entry by Secured Party upon any of its books and records.

6.2. This Mortgage, the Guaranty, the Note Purchase Agreement and the Other Agreements shall be binding upon and inure to the benefit of the representatives, successors and assigns of Mortgagor and Secured Party; provided, that Mortgagor may not assign this Mortgage without Secured Party's prior written consent.



6.3. Secured Party's failure to require strict performance by Mortgagor of any provision of this Mortgage or the Guaranty and Purchase Agreement shall not waive, affect or diminish any right of Secured Party thereafter to demand strict compliance and performance therewith. Any suspension or waiver by Secured Party of an Event of Default by Mortgagor under this Mortgage, the Guaranty and the Note Purchase Agreement or the Other Agreements shall not suspend, waive or affect any other Event of Default by Mortgagor under this Mortgage, the Guaranty and the Note Purchase Agreement or the Other Agreements, whether the same is prior or subsequent thereto and whether of the same or of a different type. None of the undertakings, agreements, warranties, covenants and representatives of Mortgagors contained in this Mortgage, the Guaranty and Purchase Agreement or the other Agreements and no Event of Default by Mortgagor under this Mortgage, the Guaranty and the Note Purchase Agreement or Other Agreements shall be deemed to have been suspended or waived by Secured Party unless such suspension or waiver is by an instrument in writing signed by an officer of Secured Party and directed to Mortgagor specifying such suspension or waiver.

6.4. If any provision of this Mortgage, the Guaranty and the Note Purchase Agreement or the Other Agreements or the application thereof to any person, entity or circumstance is held invalid or unenforceable, the remainder of this Mortgage, the Guaranty and the Note Purchase Agreement and the Other Agreements and the application of such provision to other persons, entities or circumstances will not be affected thereby and the provisions of this Mortgage, the Guaranty, the Note Purchase Agreement and the Other Agreements shall be severable in any such instance.

6.5. Mortgagor hereby appoints Secured Party as Mortgagor's agent and attorney-in-fact upon an Event of Default for the purpose of carrying out the provisions of this Mortgage and taking any action and executing any agreement, instrument or document which Secured Party may deem necessary or advisable to accomplish the purpose hereof which appointment is irrevocable and coupled with an interest. All monies paid for the purposes herein, and all costs, fees and expenses paid or incurred in connection therewith, shall be part of the Obligations, payable by Mortgagor to Secured Party on demand.

6.6. Except as otherwise specifically provided in this Mortgage or the Guaranty and the Note Purchase Agreement, Mortgagor waives any and all notice or demand which Mortgagor might be entitled to receive by virtue of any applicable statute or law, and waives presentment, demand and protest and notice of presentment, protest, default, dishonor, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all agreements, instruments or documents at any time held by Secured Party on which Mortgagor may in any way be liable

6.7. if any provision contained in this Mortgage is in conflict with or inconsistent with any provision in the Guaranty and the Note Purchase Agreement or the Other Agreements, the provision of the Guaranty and the Note Purchase Agreement shall control. This Mortgage may be executed in one or more individual counterparts, each of which shall constitute an original and all of which shall together constitute one and the same agreement.

6.8. This Mortgage shall continue in full force and effect until the Notes have been paid in full or the Guaranty has been released in full. All of Mortgagor's warranties, representations, undertakings, and covenants contained in this Mortgage, the Guaranty and the

Note Purchase Agreement or the Other Agreements shall survive the termination or cancellation of the same. Should a claim ("Recovery Claim") be made upon the Secured Party at any time for recovery of any amount received by the Secured Party in payment of the obligations (whether received from Mortgagor or otherwise) and should the Secured Party repay all or part of said amount by reason of (1) any judgment, decree or order of any court or administrative body having jurisdiction over Secured Party or any of its property; or (2) any settlement or compromise of any such Recovery Claim effected by the Secured Party with the claimant (including Mortgagor), this Mortgage and the security interests granted Secured Party hereunder shall continue in effect with respect to the amount so repaid to the same extent as if such amount had never originally been received by the Secured Party, notwithstanding any prior termination of this Mortgage, the return of this Mortgage to Mortgagor, or the cancellation of any note or other instrument evidencing the obligations.

**6.9. THE VALIDITY, INTERPRETATION AND EFFECT OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS. DEBTOR HEREBY CONSENTS TO THE JURISDICTION OF ALL COURTS IN COOK COUNTY, ILLINOIS.**

6.10. If at any time or times hereafter, whether or not the Obligations are outstanding at such time, Secured Party: (a) employs counsel for advice or other representation (i) with respect to the Collateral, this Mortgage, the Guaranty and the Note Purchase Agreement, the Other Agreements or the administration of the obligations or the Collateral; (ii) to represent Secured Party in any litigation, contest, dispute, suit or proceeding or to commence, defend or intervene or to take any other action in or with respect to any litigation, contest, dispute, suit or proceeding in any way or respect relating to the Collateral, this Mortgage, the Guaranty and the Note Purchase Agreement, the Other Agreements, or Mortgagor's affairs, or (iii) to enforce any rights of Secured Party against Mortgagor or any other person or entity which may be obligated to Secured Party by virtue of this Mortgage, the Guaranty and the Note Purchase Agreement or the Other Agreements; (b) takes any action with respect to administration of the Obligations or to protect, collect, sell, liquidate or otherwise dispose of the Collateral; and/or (c) attempts to or enforces any of Secured Party's rights or remedies under this Mortgage, the Guaranty and the Note Purchase Agreement or the Other Agreements, the reasonable costs, fees and expenses incurred by Secured Party with respect to the foregoing, shall be part of the Obligations, payable by Mortgagor to Secured Party on demand.

6.11. MORTGAGOR, IRREVOCABLY, AGREES THAT, SUBJECT TO SECURED PARTY'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT, ARISING OUT OF OR FROM OR RELATED TO THIS MORTGAGE, THE GUARANTY AND PURCHASE AGREEMENT, THE OTHER AGREEMENTS OR THE COLLATERAL SHALL BE LITIGATED ONLY IN COURTS HAVING SUITS WITHIN THE COUNTY OF COOK, STATE OF ILLINOIS, AND MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SAID COUNTY AND STATE. MORTGAGOR HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST MORTGAGOR BY SECURED PARTY IN ACCORDANCE WITH THIS PARAGRAPH.

6.12. MORTGAGOR HEREBY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING WHICH PERTAINS DIRECTLY OR INDIRECTLY TO THIS MORTGAGE OR THE OTHER LOAN DOCUMENT'S OR WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREIN AND THEREIN.

(Remainder of page intentionally blank)

IN WITNESS WHEREOF, Mortgagor and Secured Party have each caused this Mortgage to be duly executed all as of the date above written, and the undersigned signatories each hereby declare pursuant to 28 U.S.C. Section 1746 under penalty of perjury that the foregoing is a true and correct document and was executed on the date indicated below its signature.

**WITNESSES:**

By: [Signature]  
Print Name: Ray L. Bonstetter  
By: [Signature]  
Print Name: Stephen R. Miller

**EAGLEBROOK INC., Mortgagor**

By: [Signature]  
Print Name: JEDRALD C. TENNY  
Its: VICE-PRESIDENT

**WITNESSES:**

By: [Signature]  
Print Name: Tyler Van Lintburg  
By: [Signature]  
Print Name: Edward T. Hussey, Jr.

**BANC ONE MEZZANINE CORPORATION,  
Secured Party**

By: [Signature]  
Print Name: Michael J. Reed  
Its: Managing Director

ACKNOWLEDGMENTS

State of Illinois )  
 ) ss.  
County of Cook )

On this 9th day of June, 2003, before me personally appeared Terrald Tenney, to me personally known, who, being by me duly sworn, did say that he/she is the Vice President of **EAGLEBROOK INC.**, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of the corporation.



July 10, 2005  
My commission expires:

Margaret V. Brueck  
Notary Public

State of Illinois Illinois )  
 ) ss.  
County of Cook )

On this 9th day of June, 2003, before me personally appeared Michael Reusd, to me personally known, who, being by me duly sworn, did say that he/she is a Managing Director of **BANC ONE MEZZANINE CORPORATION**, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of the corporation.

July 10, 2005  
My commission expires:

Margaret V. Brueck  
Notary Public



**EXHIBIT A**

**The Tank Cars**

**71 tank cars, bearing marks and numbers EAGX 19001 through EAGX 19071, inclusive**